



March 16, 2004

***Senator Jeffords Calls for Investigation of Bush
Mercury Proposal Written by Lobbyist***

March 16, 2004

The Honorable Michael O. Leavitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Leavitt:

Recently, the Agency released a proposed rule regarding toxic mercury emissions from electric generating units. As you may know, I believe that proposal violates the Agency's legal commitment under a 1998 settlement agreement with the Natural Resources Defense Council and fails to comply with the Clean Air Act's clear statutory direction and requirements. Further, the proposal is suspect for its apparent failure to comply with the Administrative Procedures Act and Executive Order 12866. I recommend that you promptly withdraw the proposal and expeditiously re-propose an improved one that comports with the law and good and open government.

Besides the proposed rule package's gross inadequacies in controlling mercury to levels obtainable by current and near-term technology and those levels necessary to protect the public's health, the proposal appears to have been unduly and inappropriately influenced by the electric utility industry. The Agency's mercury proposal has come under additional criticism in the press for importing whole sections of text from industry memoranda, particularly the former law firm of Assistant Administrator Jeffrey Holmstead and his counsel, Mr. William Wehrum, by Latham and Watkins, as well as by West Associates. According to press accounts, Mr. Holmstead said, "That's not typically the way we do things, borrowing language from other people, but it came to us through the interagency process."

I suggest that you request an investigation by the EPA Inspector General into the allegations of undue industry influence in the rulemaking process. Based on press accounts, it appears that a handful of EPA political appointees have worked with a

like number of White House personnel to skirt, if not directly violate, the law and rules of ethical behavior. I trust and hope your action on this rulemaking in particular will be the exercise of EPA's independent authority to protect the public health and not further contamination of an already poisoned process.

In addition, I would appreciate receiving the following information as soon as possible regarding this "borrowed language":

- The agency and person that provided it to EPA through the interagency process.
- A copy of the original document transmitting the "borrowed language", and any subsequent documents which contain all or parts of that original document.
- A detailed description of the route that it followed at EPA, including identification of the person and office receiving it to the person and office that decided to include it in the proposed rule package.
- The name and position of the person at Latham and Watkins that lent the language to a Federal agency.

Also, please provide the Environment and Public Works Committee with details of any and all meetings that Mr. Holmstead and Mr. Wehrum may have had during the development of the proposed mercury rule with representatives of electric utility companies or associations of such utilities or representatives of law firms representing coal, electric utility or railroad companies or associations that might have an interest in the proposed rule, including the names of the companies or law firms and the representatives.

Thank you for your prompt attention to my request for information. Please contact me or my Committee staff (Chris Miller or Shannon Heyck-Williams at 224-8832) if you have questions or comments on either of these matters.

Sincerely,

James M. Jeffords
Ranking Member

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[\(Go to Press Office\)](#)